

SCHEDULE

Taluk : Bahour

Number and Name of Revenue Village : 77-Kirumampakkam.

Sl. No. (1)	Re-survey No. (2)	Nature of land (3)	Name of the land-owner/ interested person (4)	Extent to be acquired (5)		
				H.	A.	Ca.
1	77/3	Dry	1. Thiru Muthu Pasva, S/o. Sambasiva Reddiar; 2. Thiru Ravishankar	2	08	00
Total ..				2	08	00

(By order of the Lieutenant-Governor)

G. RAGESH CHANDRA,
Special Secretary to Government.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 45/AIL/Lab./J/2010, dated 10th March 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 3/2004, dated 7-12-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Servo Packagings Limited, Kattukuppam, Puducherry and their 4 workmen viz. 1. A. Soosairaj, 2. R.Boobalan, 3. P.Kamalakannan, 4. S. Ramesh over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
Presiding Officer-cum-
II Additional District Judge.

*Monday, the 7th day of December 2009***I.D. No. 3 of 2004**

The President/Secretary,
Servo Packaging National
Employees Union,
29, Indira Nagar,
Kirumampakkam, Pondicherry .. Petitioner

Versus

The General Manager,
Servo Packaging Limited,
88-1, Cuddalore-Pondy Main Road,
Kattukuppam, Pondicherry .. Respondent

This case coming on 3-12-2009 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner Thiru K. Parthiban, Advocate for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:

ORDER

This industrial dispute has been referred to as per the G.O. Rt. No.170/2003/Lab./AIL/J, dated 18-12-2003 for adjudicating the following:—

(1) Whether the non-employment of Thiruvallargal A. Soosairaj, R. Boopalan, P. Kamalakannan and S. Ramesh by the management of M/s. Servo Packaging, Pondicherry is justified or not ?

(2) To what relief they are entitled to ?

(3) To compute the relief, if any, awarded in terms of money if it can be so computed ?

2. The facts of the industrial dispute in brief is as follows :

The respondent company was acting as against the welfare of their employees. Hence, in order to prevent the act of the respondent company and to ask for their rights, the employees formed an union under the head of Thiru Kandasamy, M.L.A., and then under the head of Thiru Rajavelu. Since the said union functioned in favour of the respondent company, the employees formed a new Union by name “இந்திய தொழிற்சங்க மையம்” (C.I.T.U.) on 8-4-2002 and informed the same to the respondent company through a letter. On 23-4-2002 they sent a letter to the Labour Officer to register the said union and on enquiry made by the said officer, the union was registered. On coming to know of the registration of the said union, the respondent company suspended A. Soosairaj, Secretary, M. Ramalingam, Vice-President, R. Boobalan, Joint Secretary, P. Kamalakannan, Cashier, S. Ramesh, P. Ponnusamy and P. Balasubramaniam, Executive Members by saying false allegations. The said persons signed in the application for registering the union. The said fact was informed to the Registrar through a letter and asked him to interfere with the matter. Fearing on the act of the respondent company, the said Ramalingam, Balasubramaniam and Ponnusamy have avoided to participate in the union activities and hence the action against the said persons was dropped by the respondent company, but the respondent company terminated the remaining persons by name A. Soosairaj, R. Boopalan, P. Kamalakannan and S. Ramesh. To protest against the order of the respondent company, the employees union approached the Conciliation Officer and the said officer took up the matter for enquiry on 13-8-2002.

3. The respondent company did not take part in the enquiry of the Conciliation Officer and while the enquiry was pending before the Conciliation Officer, the respondent company conducted a domestic enquiry, which was against the natural justice. Especially, the

request of the charged workmen to have the assistance of the President of the Union in the inquiry was not accepted by the Enquiry Officer. Their further request that the enquiry should be conducted in the place other than the place of respondent was also not accepted by the Enquiry Officer. The enquiry was conducted by Thiru K. Babu, who acted in favour of the respondent company. The said Enquiry Officer submitted his report to the respondent company and based on his report, the respondent company terminated the services of the said four employees. Hence, the petitioners filed this petition praying for reinstatement of the said persons with back wages and other attendant benefits.

4. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments:—

There is no cause of action to sustain the above petition and the petition alleged cause of actions are falsely created by the petitioners for the purpose of the above vexatious petition and hence the *mala fide* petition is unsustainable under law and is liable to be dismissed. Since the petitioners had been terminated upon the proof of their grave and serious misconduct act after due domestic enquiry, the petitioners have no *locus standi* to file the above petition. It is further submitted that on 22-7-2002 the petitioner workers namely 1. A Soosairaj, 2. R. Boobalan, 3. P. Kamalakannan and 4. S. Ramesh had resorted to commit serious misconduct acts such as willful insubordination, threatening the staffs and the workers with dire consequences, deliberately failing to attend the assigned works, assaulting the supervisor/staffs and tea boy, damaging machines and company properties, sleeping in the work place during working hours, leaving abruptly factory during working hours without any permission, not maintaining discipline within the factory, involving in the act of conspiracy in committing sabotage of machineries and causing damage to the machineries, wilfully stopping the machine, causing production loss, willfully refusing to receive the show cause notices and letters, creating tense atmosphere in the factory etc. Hence the management initiated independent domestic enquiry against the said petitioner workers and based on the enquiry report, the said four persons were terminated to maintain discipline in the factory. Further the enquiries conducted against the petitioner workers are fully in accordance with law and principles of natural justice

and are valid in view of the seriousness of the acts of misconduct categorically proved in the domestic enquiries, the impugned order is justified and it does not warrant any interference of this court under any circumstances. Hence, he prays for dismissal of the petition.

5. During enquiry, on the side of the petitioner, one of the workmen by name Soosairaj was examined as PW1 and through him, Ex. P1 to Ex. P9 were marked. On the side of the respondent, one R. Narayana Rao, being the Power Agent of the respondent company was examined as RW1 and through him, Ex. R1 to Ex. R29 were marked by consent.

6. The points for consideration are :

(1) Whether the dismissal of the workmen A. Soosairaj, R. Boopalan, P. Kamalakannan and S. Ramesh is justified or not ?

(2) To what relief ?

(3) To compute the relief, if any, awarded in terms of money if it can be so computed ?

7. *Point No 1 :*

This reference has been made by the Government to decide whether the non-employment of A. Soosairaj, R. Boobalan, P. Kamalakannan and S. Ramesh by the respondent management is justified or not? On appearance of petitioner and the management, they filed their respective claim statements as well as the counter.

8. On hearing both sides and on perusing the records, it reveals that the workers of the respondent viz., A. Soosairaj, R. Boopalan, P. Kamalakannan and S. Ramesh have been dismissed by the respondent. The petitioner alleged by way of his claim statement that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. He has conducted the domestic enquiry in a biased manner without giving any opportunity which are entitled for the delinquents as per law as well as by the principles of natural justice. Moreover the Inquiry Officer has not heard the contentions of the workers and the enquiry report has also been submitted with unjustified findings. In fact the said workmen have not committed any misconducts as alleged by the respondent. But the management have taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion

by the Inquiry Officer the management dismissed the said workmen. The management filed its counter before this court that they have followed the principles of natural justice while charging the delinquents and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the said workmen had been dismissed from their services as per the principles of natural justice. Even in the domestic enquiry the petitioners 1 and 2 have been allowed to be assisted by their co-employee instead of not allowing them to be assisted by an employee who is not the employee of this management and though the petitioner workmen have been given fair chance to peruse the records as well as to cross-examine the witnesses who were examined on the side of the management in the domestic enquiry, they failed to utilise the same. On no other option, the Inquiry Officer has decided the enquiry in an *ex parte* manner and on considering the documents as well the evidences of the management witnesses he had rightly come to the conclusion that the charges of the petitioner workmen were proved. On the conclusion of the report submitted by the Inquiry Officer the petitioner workmen have been terminated from their services by way of punishment of the mistakes committed by them. Hence, there is no scope to intervene the order of this management by the Labour Court and prays for the dismissal of the reference.

9. At this stage when we peruse the domestic enquiry reports relating to the petitioner workmen, we can understand that four witnesses were examined in the enquiry of Boobalan and Soosairaj and one witness was examined in the enquiry of Ramesh on the side of the management. The petitioner workmen have been permitted to appear through their assistants and they have been given copy of all the material papers. During the enquiry on 5-10-2002 the petitions given by the petitioner workmen upon the Enquiry Officer have been rejected by the management. Hence, the petitioner workmen have not participated in the enquiry proceedings. On 5-10-2002, 10-10-2002, 25-10-2002, 15-11-2002 and 6-12-2002 when the enquiry was taken up, the petitioner workmen had not appeared and on non-appearance of the petitioner workmen without representation the Inquiry Officer set them *ex parte* and he continued to examine the management witnesses. The management witnesses have not been cross-examined by the petitioner workmen and the evidence of the management witnesses also had not been recorded in the presence of the petitioner workmen. Then on the final hearing of the enquiry

proceedings, that is, on 6-12-2002, the workmen appeared in the enquiry proceedings and again requested to appear through their assistant by name Durai Arumugam and the said request was again rejected by the management. In the absence of workmen, the Inquiry Officer decided the enquiry against the delinquents that all the charges framed against them are proved. But in the inquiry report submitted by the Inquiry Officer he concluded the enquiry not only upon the testimony of the witnesses examined on the side of the management and on considering the exhibits marked in the enquiry but also he has stated that on perusing the old records the delinquents are in a habitual manner against the management and on considering the antecedents of the delinquents also he has come to the conclusion as the charges levelled against the petitioners proved by the management. This kind of conclusion upon the antecedents of the petitioners by the Inquiry Officer is not within the scope of the enquiry and the Inquiry Officer should not have come to a conclusion upon the antecedents of the petitioners without enquiring the antecedents with due opportunity given to the petitioner workmen, which is unwarranted, which shows the biasedness of the Inquiry Officer against the delinquents.

10. At this juncture since the Inquiry Officer himself concluded the charges in a biased manner in the domestic enquiry, we need not go into the sustainability of the charge, upon the biased enquiry report alone, the management also acted to dismiss their employees which is against the principles of natural justice. No opportunity has been given to explain about the antecedents of the petitioners either by the Inquiry Officer or by the management before the petitioner workmen have been decided to be dismissed from their services.

11. The learned counsel for the respondent has argued that the petitioner workers had resorted to commit acts of serious misconduct, such as, wilful insubordination, threatening the staffs and the workers with dire consequences, deliberately failing to attend the assigned works, assaulting the supervisor/staffs and tea boy, sleeping in the work place during working hours, leaving abruptly factory during working hours without any permission, not maintaining discipline within the factory, wilfully stopping the machine, causing production loss, wilfully refusing to receive the show cause notices and letters, creating tensed atmosphere in the factory etc., Hence, the charges have

been framed against them along with other charges of their past misconducts which were proved in the domestic enquiry and in the domestic enquiry also due opportunities and fair chances have been given as per law which were not availed of by the petitioner workmen and on the report submitted by the Inquiry Officer and on proved charges the petitioner workmen have been dismissed from their service by way of punishment of their mistakes. Moreover he argued and relied upon the following judgments, wherein it is held as follows:-

Crescent Dyes & Chemicals Ltd., Vs. Ram Naresh Tripathi : 1993 ILLJ S.C. Page 907:-

“Right of employee to be represented in departmental enquiry-Scope of Sections 21 and 22 of 1971 Act- Enquiry Officer justified in refusing permission to be represented by an outside - Held : Providing that a delinquent employee could only be represented in the enquiry by a clerk or workman working in the same department, as himself is not violative of the principles of natural justice. The requirement of rule of natural justice does not extend to a right to be represented through a counsel or agent.”

R.S. Korvi Vs. Peico Electronics and Electricals Ltd., Loni Kalbhor and Anr. : 2009 LLR 33:-

“Dismissal from service.— Of the petitioner for assaulting senior officer in the factory premises - Show cause notice issued -Enquiry was conducted - Proceedings were adjourned time and again at the request of petitioner and finally a registered letter was sent to her intimating that the date for final hearing was fixed and in case of the petitioner still abstained - The enquiry would be held *ex parte* - *Ex parte* enquiry resulted in her termination - Challenged before the Labour Court - Labour Court upheld dismissal from service - In writ petition - Labour Court’s award upheld.”

Sahara Airlines Ltd., Vs. Capt. R. Khosla : 2009 LLR 243:-

“Enquiry - When vitiated by the Industrial Tribunal for perversity - Then opportunity should be given to the petitioner/management to adduce evidence to prove the misconduct as levied in the charge-sheet.”

The learned counsel for the respondent further argued that when the charges are grave in nature. Section 11 A of the Industrial Disputes Act cannot be exercised unless the punishment is highly

disproportionate and the Labour Court should not exercise under section 11 A of the Industrial Disputes Act merely on sympathy upon the workman and unless the manner of conduct of inquiry is proved as biased and the non-grant of permission to be assisted permission by the union leader will not be fatal to the enquiry because in this disputes the petitioner workmen were allowed to be assisted by a co-worker. As argued by the learned counsel for the management I find no reason to have any sympathy upon the petitioner workmen to consider this dispute by applying the special provision of section 11-A of the Industrial Disputes Act, 1947.

12. On considering the above arguments of the respondent, the citations which are relied upon are undoubtedly applicable not only to this industrial dispute but also applicable to all the disputes before the Labour Courts. But the facts and circumstances of this disputes are entirely different have already concluded that the Inquiry Officer himself has acted in a biased manner against the delinquents by way of his conclusion upon the charges of the petitioner workmen. Further the Inquiry Officer unwarrantedly perused the back files of the petitioner workmen and concluded the charges against them as proved beyond the scope of the enquiry which clearly shows the bias of the Inquiry Officer.

13. Further, the contention of the learned counsel for the respondent is that the petitioner workmen damaged the machineries and thereby caused production loss to the management. In order to prove his contention, one Narayana Rao was examined as RW1. Though RW1 in his evidence has stated about the damage caused to the machineries of the respondent company, during the cross-examination, he has admitted that no police complaint was filed in this regard. When the respondent alleged that the petitioner workmen caused damages to the costly machineries, they would have taken action against them by way of filing the police complaint. Further there are no photos produced on the side of the respondent to prove the alleged damages. This itself would prove that this is a concocted story only for the purpose of this case in order to take vengeance against the petitioner workmen. Hence, the decision of dismissal of the petitioner workmen by name Thiruvallargal A. Soosairaj, R. Boobalan, P. Kamalakannan and S. Ramesh from the company by the respondent is an erroneous one and is also unjustified and accordingly I decide this point in favour of the petitioner and as against the respondent.

14. Points 2 and 3 :

Since the Point No.1 is decided in favour of the petitioner workmen by name Thiruvallargal A. Soosairaj, R. Boopalan, P. Kamalakannan and S. Ramesh, they can get the relief *viz.*, benefit of reinstatement with full back wages and other attended benefits with continuity of service from the management/respondent. These points are decided accordingly in favour of the petitioner

15. In the result, the industrial dispute is allowed and the respondent/management is ordered to reinstate the petitioner workmen by name Thiruvallargal A. Soosairaj, R. Boopalan, P. Kamalakannan and S. Ramesh with full back wages and other attendant benefits with continuity of service and without cost.

Dictated to the Stenographer, transcribed and typed by her, corrected and pronounced by me in the Open Court on this the 7th day of December, 2009.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked on the side of the petitioner:

P.W.1 — 22-3-2007 Soosairaj

List of documents marked by the petitioners:

- Ex. P. 1 — Letter, dated 8-4-2002 sent by the petitioner's union to the respondent company intimating about the new union.
- Ex.P. 2 — Letter, dated 23-4-2002 sent by the petitioner's union to the Labour Department.
- Ex.P. 3 — Call letter, dated 17-3-2002 by the Labour Officer.
- Ex.P. 4 — Copy of the Registration of Trade Union.
- Ex.P. 5 — Letter, dated 2-8-2002 sent to the Labour Department by the petitioner's union.
- Ex.P. 6 — Strike notice, dated 6-8-2002 given by the petitioner's union.
- Ex.P. 7 — Notice of enquiry, dated 14-8-2002 sent by the Labour Officer to the petitioner's union.
- Ex.P. 8 — Letter, dated 5-10-2002 sent by the Soosairaj to the respondent company.
- Ex.P. 9 — Termination order.

List of witnesses examined on the side of the respondent :

RW. 1 — 16-4-2009 - Narayana Rao.

List of documents marked by the respondent :

Ex. R. 1 — Copy of the complaint, dated 22-7-2002 sent by Latchumanan to the respondent.

Ex. R. 2 — Copy of the complaint, dated 22-7-2002 sent by Rajamudi and Sundaramoorthy to the respondent.

Ex.R. 3 — Copy of the complaint dated, 22-7-2002 sent by Saravanan to the Senior Manager of the respondent.

Ex.R. 4 — Copy of the charge sheet, dated 31-7-2002 issued to Boobalan.

Ex.R. 5 — Copy of the reply, dated 23-9-2002 sent by Boobalan.

Ex.R. 6 — Copy of the enquiry proceedings.

Ex.R. 7 — Copy of the enquiry report, dated 19-3-2003.

Ex.R. 8 — Copy of the final show cause notice, dated 29-3-2003.

Ex.R. 9 — Copy of the termination letter, dated 29-4-2003 to Boobalan.

Ex.R. 10 — Copy of the charge sheet, dated 31-7-2002 to Soosairaj.

Ex.R. 11 — Copy of the reply, dated 23-9-2002 sent by Susairaj.

Ex R. 12 — Copy of the enquiry proceedings.

Ex R. 13 — Copy of the enquiry report, dated 19-3-2003.

Ex.R. 14 — Copy of the final show cause notice, dated 29-3-2003.

Ex.R. 15 — Copy of the termination letter, dated 29-4-2003 sent to Soosairaj.

Ex.R. 16 — Copy of the charge sheet, dated 31-7-2002 issued to Kamalakannan.

Ex.R. 17 — Copy of the reply, dated 23-9-2002 sent by Kamalakannan.

Ex. R. 18 — Copy of the enquiry proceedings.

Ex. R. 19 — Copy of the enquiry report, dated 19-3-2003.

Ex. R. 20 — Copy of the final show cause notice, dated 29-3-2003.

Ex.R. 21 — Copy of the termination letter, dated 29-4-2003 sent to Kamalakannan.

Ex.R. 22 — Copy of the charge sheet, dated 27-7-2002 issued to Ramesh.

Ex.R. 23 — Copy of the letter, dated 5-8-2002 sent by Ramesh to the respondent.

Ex.R. 24 — Copy of the letter, dated 17-8-2002 sent by Ramesh to the respondent.

Ex.R. 25 — Copy of the letter, dated 17-9-2002 sent by Ramesh to the respondent.

Ex.R. 26 — Copy of the enquiry proceedings.

Ex.R. 27 — Copy of the enquiry report, dated 19-3-2003.

Ex.R. 28 — Copy of the final show cause notice, dated 29-3-2003.

Ex.R. 29 — Copy of the termination letter, dated 29-4-2003 sent to Ramesh.

Ex.R. 30 — Copy of the letter issued by Department of Industries and Commerce.

Ex.R. 31 — Standing Order.

E.M.K.S. SIDDHARTHAR,

Presiding Officer,

Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

HOME DEPARTMENT

(G. O. Ms. No. 9, dated 11th March 2010)

NOTIFICATION

Approval of the Lieutenant-Governor is hereby accorded for constitution of Crisis Management Committee for the Union territory of Puducherry at State, District and Regional Level as detailed below :—

State Apex Crisis Management Committee :

There shall be a State Apex Crisis Management Committee with the following composition for dealing with major crisis which has serious or state ramifications.

- | | |
|----------------------------|-------------|
| (1) His Excellency the | .. Chairman |
| Lieutenant-Governor. | |
| (2) Hon'ble Chief Minister | .. Member |